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Pre-Hearing Brief
Case # 001-CP-08
In re. Bangladesh Country Practice Petition.

September 1, 2010

ATTN:

Mr. Seth Vaughn, Director, GSP Program
Chairman, GSP Subcommittee of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St., NW
Room 514
Washington, DC 20508

Pursuant to [75 FR 135] (July 15, 2010), the International Labor Rights Forum (ILRF) hereby files this pre-hearing brief in support of the on-going review of violations of internationally recognized workers' rights by the Government of Bangladesh (GOB), including violations of the freedom of association and acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety, Case # 001-CP-08.

Notice of Intent to Testify: Brian Campbell, Policy Director, International Labor Rights Forum, hereby provides notice to the Committee of his intent to testify

I. Introduction

In 2007, the AFL-CIO filed petition case # 001-CP-07(updated to 001-CP-08) pursuant to 15 C.F.R. §2007(b) to request a review of Bangladesh's designation as a beneficiary country under the Trade Act of 1974, Generalized System of Preferences (GSP), 19 U.S.C. §2461 et seq., as amended. The Government of Bangladesh (or GOB) has failed to take steps to afford its workers "internationally recognized worker rights" as required under 19 U.S.C. § 2462(b)(2)(G) & (c)(7) and defined in 19 U.S.C. § 2467(4).

Bangladeshis face hazardous working conditions and an abysmal minimum wage, which even with its recent increase, fails to cover the most basic cost of living. Moreover, minimum wage laws and other labor rights protections face serious systematic lack of enforcement. Workers in the apparel sector, Bangladesh's largest export sector, face endemic occupational health and safety hazards. In one notorious case in 2010, 21 garment workers suffocated in an apparel factory fire in Dhaka after escape routes were deliberately locked.

Workers and allied organizations that advocate for the enforcement and protection of internationally recognized workers' rights face numerous obstacles including threat of violence. The Government of Bangladesh (hereinafter GOB) assumed an oppositional approach to non-governmental organizations (NGOs) and trade unions in Bangladesh during the "State of Emergency" declared in January 2007. Since the end of the "State of Emergency" in December 2008, the GOB's approach to labor rights advocates has not changed.

Since the 2007 petition, and despite the scrutiny afforded by the case, the GOB has failed to direct its resources or apply the political will necessary to make substantial progress on the enforcement of labor rights. Indeed, in recent weeks developments related to a leading human rights organization, the Bangladesh Center for Worker Solidarity (BCWS), suggest backsliding on the part of the GOB and overall deterioration of the situation for labor rights advocates in Bangladesh.

The GOB has not demonstrated adequate progress toward protecting basic worker rights in Bangladesh, including the important rights of free expression and freedom of association, or strengthening overall access to rule of law for workers and civil society activists.

II. Labor law in Bangladesh is not in conformity with Bangladesh's international obligations with regard to freedom of association and the right to organize.

Several international bodies and organizations have expressed grave concern regarding the dismal state of workers' rights in Bangladesh. USAID describes the situation as follows, "Labor rights are commonly ignored by the private sector, particularly for the most vulnerable workers such as women and children."¹ The US State Department's 2009 Human Rights Report on Bangladesh further stated, "Because of high unemployment rates and inadequate enforcement of laws, workers demanding redress of dangerous working conditions or who refused to work under hazardous conditions risked losing their jobs."² The International Labor Organization, (ILO) estimates that every year in Bangladesh, "11,700 workers suffer fatal accidents and a further 24,500 die from work related diseases across all sectors."³

¹ USAID/Bangladesh, *Strategic Statement. FY 2006-2010*, September 2005. Available at: http://www.usaid.gov/bd/files/strategic_statement.pdf (accessed July 29, 2010).

² U.S. Department of State, *2009 Human Rights Report: Bangladesh*, March 11, 2010 available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136085.htm> (accessed July 20, 2010).

³ ILO, *Bangladesh Decent Work Country Programme*, available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_106634.pdf (accessed July 29, 2010).

The ILO has repeatedly examined labor conditions in Bangladesh. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has commented on multiple violations of ILO Convention 87, Freedom of Association and Protection of the Right to Organize Convention, (1948) and Convention 98, Right to Organize and Collective Bargaining Convention. The Committee found “serious discrepancies between the national legislation and the Convention [87].”⁴ The Committee noted:

“...the adoption of the Bangladesh Labour Act 2006 (the Labour Act), which replaced the Industrial Relations Ordinance of 1969, and noted with deep regret that the Labour Act did not contain any improvements in relation to the previous legislation and, in certain regards, contained even further restrictions...”⁵

The CEACR highlighted instances where domestic legislation in Bangladesh is in direct violation of internationally recognized labor standards, including the restriction of specific workers from joining or forming unions, those which act in a supervisory capacity named ‘confidential’ workers, overreaching exclusion of “essential workers” from those able to unionize, and several unwarranted restrictions on the right to strike.⁶

III. The Government of Bangladesh arbitrarily imposes obstacles on labor rights NGOs and subjects them to restrictive operational requirements that impede their freedom of expression and deny appropriate due process of law to civil society actors

Due to excessive restrictions on labor unions, NGOs play an integral role in advocating for the working class and marginalized populations. Because of their forthright criticism of government policy and actions, NGOs are subject to violent attacks, which undermine their ability to do their work and exercise freedom of expression concerning government and business practices. NGOs played a critical role while trade unions were all but prohibited from functioning during the State of Emergency though their work garnered extraordinarily harsh treatment from the military.

International and domestic labor organizations, such as Odhikar and the American Center for International Labor Solidarity (ACILS), reported that “the government sought to impede their work either by canceling projects or subjecting them to restrictive operating requirements.”⁷ Odhikar, a USAID grant beneficiary, was notified by the NGO Affairs Bureau of Bangladesh, the office within the prime minister’s office that approves NGO projects, that its approval of an ongoing human rights training and advocacy project would be canceled citing objections to the project by the Ministry of Home Affairs.⁸

⁴ 355th Report of the Committee on Freedom of Association (November 2009) Governing Body, 306th Session, GB.306/7, November 2009, available at: https://webdev.ilo.org/global/What_we_do/InternationalLabourStandards/WhatsNew/lang--en/docName--WCMS_117772/index.htm (accessed July 29, 2010).

⁵ Id.

⁶ Id.

⁷ U.S. Department of State, *2009 Human Rights Report: Bangladesh*, March 11, 2010 available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136085.htm> (accessed July 20, 2010).

⁸ Id.

On June 3, 2010, the Bangladesh Center for Workers Solidarity (BCWS) was stripped of its legal NGO status. Since the early 1990s, the BCWS has maintained a longstanding tradition of advancing workers' rights by documenting labor abuses and conducting educational outreach on labor rights. BCWS has gained international support for projects educating women of their workplace rights in order to tackle endemic gender discrimination with financing from USAID and the British Government's Department for International Development.⁹

A letter issued by the Bangladeshi NGO Affairs Bureau, and a subsequent "Non-Paper," suggest the need for USTR to examine closely whether Bangladesh may not satisfy overall good governance criteria in US trade and development policy. The letter failed to provide reasonable legal basis for the actions taken, stating that the cause for stripping BCWS of its NGO status as "making chaos at RMG industry, supporting to make workers unrest, assisting, act like a turbulence to create unrest with others evil activities of anti-state and anti-social activity that all are evidenced."¹⁰ None of the claims in this letter were substantiated by any GOB source with any factual evidence, nor was any notice given nor any process to allow BCWS to respond to these allegations.

The timing of the NGO registration cancellation raises concerns related to corruption and collusion between the GOB and the ready made apparel industry. In April 2010, workers at a major apparel factory, Nassa Global Wear, during their attempt to form an independent trade union, contacted BCWS for support and assistance with conflict resolution. While the NGO Affairs Bureau did not officially notify BCWS of the cancellation of its legal status until June 10, Nassa managers knew about it earlier, and Nassa informed its workers on June 6—four days before BCWS received notification—that they expected BCWS to be closed down.

More than one month after BCWS had lost its NGO certification, and only after widely condemned by international human rights organizations, the Government of Bangladesh in Dhaka issued a statement offering *post hoc* justification for the cancellation, indicating that BCWS "did not apply for renewal of registration with the NGO Affairs Bureau six months prior to expiry" as required.¹¹ The Government of Bangladesh attempted to reassure concerned international observers by commenting that "registration of as many as 585 NGOs met... [a] similar fate on identical grounds."¹² However, BCWS was not offered prior notification of this breach, nor was notified at the time the registration was cancelled. BCWS refuted this account

⁹ "The law prohibits discrimination, but the government did not strongly enforce laws aimed at eliminating discrimination. Women, children, minority groups, and persons with disabilities" 2009 Human Rights Report: Bangladesh, Bureau of Democracy, Human Rights, and Labor March 11, 2010 available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136085.htm> (accessed July 29, 2010) Of note: The ILRF funded BCWS project to developed a leadership Skills Training program for women garment workers.

¹⁰ Letter from the NGO Affairs Bureau, PM Office, to BCWS, on file at BCWS.

¹¹ Id.

¹² Id.

of events, stating that the registration required related only to the ability to receive foreign donations.¹³ At the time of expiry of the registration, they were not receiving foreign donations rendering the renewal process unnecessary. As noted, the authorities did not provide BCWS with any chance to present a self-defense before cancelling their registration. The cancellation was also highly unusual as in most cases in Bangladesh, appropriate sanctions are not applied when minor administrative procedures are violated by factory owners, or even when there is a serious breach of worker safety. For instance, the Garib & Garib Factory (discussed below) had multiple fires with fatalities, yet was given permission to continue to operate. Finally, the coincidence in timing between the NGO revocation and the arbitrary detention and torture of an associated labor rights activist, described below, supports the conclusion that the cancellation of the BCWS registration was a deliberate act of intentional repression of human rights activism on the part of the GOB.

IV. Bangladeshi Government Security and Intelligence Services threaten and intimidate civil society and labor leaders through violence, torture and arbitrary detention

The Government of Bangladesh has used its security services to threaten and intimidate civil society and labor leaders with violence and torture. Recent images caught a Bangladeshi police officer aggressively beating a child during a garment workers' protest with a baton. These images gained international media attention,¹⁴ however many more incidents of violence go unreported by both local and international media. The International Trade Union Confederation (ITUC) recently raised concern over the following cases to the CEACR:

“the arrest of and bringing of charges (later dropped) against members and leaders of the Bangladesh Independent Garment Workers Union Federation (BIGWUF), the Shawdhin Bangla Garments Sramik Karmachari Federation (SBGSKF), the Textile Garments Workers Federation (TGWF), the Bangladesh Posak Shilpo Sramik Federation (BPSSF), and the National Garment Workers Federation (NGWF); the imprisonment from September to December of the President of the New Modern Garment Workers and Employees Union (NMGWEU); the beating of female garment workers for having participated in a strike; and arrests, detentions and physical assault by the police against numerous workers from more than a dozen garment factories”¹⁵

¹³ Letter to Director General, NGO- affairs Bureau, PM Office, from BCWS. Dated 07/27/2010. On file at ILRF

¹⁴ Jason Burke, “Children beaten by Bangladeshi police as they join garment workers’ strikes”, *Guardian*, June 30, 2010. Available at: <http://www.guardian.co.uk/world/2010/jun/30/bangladesh-strikes-children-beaten-police> (accessed July 29, 2010).

¹⁵ 355th Report of the Committee on Freedom of Association (November 2009) Governing Body, 306th Session, GB.306/7, November 2009, available at: https://webdev.ilo.org/global/What_we_do/InternationalLabourStandards/WhatsNew/lang--en/docName--WCMS_117772/index.htm (accessed July 29, 2010).

The ITUC's statement represents a snap shot of government practice and does not speak to abuse by private security forces and hired "hooligans" lent tacit support by the police.¹⁶

Although BCWS has experienced harassment for its work in defense of labor rights for many years, the intensity and frequency of the attacks severely escalated in the summer of 2010. The pressure culminated when BCWS staff member Aminul Islam was apprehended and arbitrarily detained by National Security Intelligence officers on June 16, 2010 when attending a meeting at the Director of Labor offices with the Chief Inspector of Factories to discuss worker unrest. He was tortured, and after refusing to falsely incriminate others in his organization, he was forced to sign a self-incriminating statement. Mr. Islam describes his treatment by intelligence officers as follows:

"I didn't follow their orders. When they found that I wrote what I was thinking they started to beat me again. Once they told me, 'Ok. You could write as you wish, but now write what I say, that you have made a mistake, and that by agitating workers you have committed a crime and for that you beg pardon of us.' Then I gave them the written statement. Then they gave me some conditions. The conditions were follows: 1) For the next two months I could not meet or talk with Babul and Kalpona; 2) I couldn't work for BCWS anymore; 3) If I met Babul or Kalpona, or worked at BCWS then I would be killed in a cross-fire¹⁷ and my wife and children would become orphans; 4) I would have to live at my father-in-law's house at Serpur or I would have to live in Chittagong and I would have to present myself at the NSI office twice daily and keep communicating with Amin [a National Intelligence Service officer]."¹⁸

Mr. Islam escaped police custody, is now in hiding, and unable to communicate or stay with his wife and children. To date, no charges have officially been filed against him.

Several branches of police are now searching for BCWS staff and leaders, threatening their family members with beatings, harassing colleagues, and attempting various forms of deception in order to identify their place of hiding. BCWS leaders are worried about their own physical safety, as well as that of their families and colleagues, and are in serious danger of unlawful detention and potential inhumane and degrading treatment at the hand of the authorities. The harassment has implied financial costs to BCWS; they have seen their office rent increase by 60% coinciding with the security services' crackdown.¹⁹

¹⁶ War on Want, *Ignoring the Law, Labour rights violations in the garment industry in Bangladesh*, July 2009, p.5. Available at: <http://www.waronwant.org/attachments/Ignoring%20the%20Law%20-%20Labour%20Rights%20Violations%20and%20the%20Bangladeshi%20Garment%20Industry.pdf> (accessed July 29, 2010).

¹⁷ In other words, his assassination would be covered up in a staged cross-fired incident.

¹⁸ Statement of Aminul Islam June 18, 2010. On File with ILRF.

¹⁹ Testimony by BCWS to ILRF.

Most notably, BCWS leaders Kalpona Akter and Babul Akther were arrested on the early morning of August 13th. Ms. Akter and Mr. Akther were arrested by 20 police officers, who raided the office where they were staying overnight as their family homes were under surveillance by police and security forces. The charges are extremely vague and general, and remain unsubstantiated. In its ‘Non-Paper’ circulated to the US government and stakeholders²⁰, the GOB states, ‘It was pointed out in those meetings that there were specific credible information concerning the activities of one Mr. Babul Akter and one Ms. Kalpana Akter in fomenting unrest and agitation in the garments sector using the name of BCWS which was contrary to the interest of the common workers as well as the country.’ However, neither does the Non-Paper provide any specifics of the referenced ‘credible information’ nor have repeated requests for details been answered. The formal charge sheets are equally vague. For example, in a case filed on June 19th, Babul Akther and Aminul Islam are accused of having entered the Nassa Basic factory on June 18th, having assaulted officers and vandalized properties. However, that day Babul Akther was witnessed to be in attendance at a meeting, while Aminul Islam received medical treatment after being detained and severely beaten by the National Security Intelligence on June 16th.

The arrests, carried out on August 13, came in the wake of widespread unrest among Bangladeshi garment workers, who have demanded an increase to the country’s minimum wage. Unrest peaked on July 30 of this year when an announced wage increase for garment workers was significantly less than many anticipated. In the face of any evidence to the contrary, and based on the long track record of the arrested advocates as credible and law-abiding civil society leaders, leading human rights organizations have concluded that the Bangladesh government and key apparel contractors have responded by scapegoating peaceful, respected labor rights advocates, falsely accusing them of inciting riots.

The crackdown on BCWS leaders has been condemned by leading human rights organizations, including Human Rights Watch, which has described the government’s actions as “part of a campaign against labor right activists, union leaders, and workers who have been pressing for the right to organize unions and demanding increases in the minimum wage.”

Bangladesh’s security forces have an abysmal human rights record. The US Department of State found in its most recent human rights report that “[a]lthough the constitution prohibits torture and cruel, inhuman, or degrading punishment, security forces including the RAB, military, and police frequently employed severe physical and psychological abuse during arrests and interrogations... Abuse consisted of threats, beatings, and the use of electric shock.”²¹ Human Rights Watch noted in a May 2009 report that “[t]orture of detainees by state officials is routine. Detainees are subjected to severe beatings, sexual violence, electric shocks, having nails

²⁰ “Non-Paper Briefing Note on BCWS’ Registration and Arrest of Two Leaders,” circulated by Embassy of Bangladesh, Washington, DC, August 2010.

²¹ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor. “2009 Human Rights Report: Bangladesh,” March 11, 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136085.htm>

hammered into their toes, and being tied to poles and forced to stand for long periods of time.”²² Human rights monitors have raised particular alarm concerning corruption and abuse by the government’s police force and, in particular, its notorious “Detective Branch.” Human Rights Watch noted that “[t]he police force has a well documented history of frequent human rights abuses, including use of arbitrary arrests and torture to extort money and extract confession. It is regarded as one of the most corrupt institutions in Bangladesh.”²³

Widespread corruption in Bangladesh is also well-documented. Transparency International’s Corruption Perceptions Index for 2009 lists Bangladesh as 139th out of 180 countries rated- close to the bottom.²⁴ Two major apparel industry conglomerates – Envoy Group and Nassa Group – are now known to have played a central role in precipitating Ms. Akter and Mr. Akhter’s arrest. During the months prior to their detention, BCWS had documented serious labor rights violations at workplaces operated by both companies. In the case of Nassa Group, the company filed vindictive criminal charges against BCWS’s leaders in transparent retaliation for the lawful research, education and advocacy efforts that BCWS has carried out. In the case of Envoy Group, BCWS had documented that the company was pressuring workers to lie to brand auditors about its labor practices in order to conceal abuses and threatening that the company would file criminal charges against anyone who spoke out. After the arrests, the Envoy Group’s Managing Director – who currently serves as president of the Bangladesh Garment Manufacture and Exporters Association – publicly applauded Ms. Akter and Mr. Akhter’s detention.

V. The Government of Bangladesh fails to monitor or enforce occupational health and safety standards and deliberately impedes NGO efforts to monitor health and safety standards.

Of all the major apparel producing countries, Bangladesh has by far the worst record of fatal accidents involving workers. As stated above, some 11,700 workers lose their lives in workplace accidents each year. Of the thousands of lives lost in 2010, the workplace death toll includes 21 workers that lost their lives in a fire at the Garib & Garib Factory, in the Gazipur district of Dhaka. That fire was just one of a number of fatal fires in the apparel sector. The fire was the third fire within a year at that specific factory, and the second of which caused fatalities.²⁵ The factory’s fire-fighting equipment was "virtually useless", according to the Dhaka Fire Service and Civil Defense. Workers could not escape because exits were locked and

²² Human Rights Watch. “Ignoring Executions and Torture: Impunity for Bangladesh’s Security Forces,” May 18, 2009, <http://www.hrw.org/en/reports/2009/05/18/ignoring-executions-and-torture-0>

²³ *Id.*

²⁴ http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table

²⁵ Clean Clothes Campaign, *Compensation Bangladeshi Fire Victims Inadequate*, June 21, 2010, available at: <http://www.cleanclothes.org/urgent-actions/compensation-deceased-garib-workers-still-inadequate> (accessed July 29, 2010).

materials blocked the stairways.²⁶ Factory owners, concerned and paranoid that workers might steal garments during a fire evacuation, risked the lives of workers by obstructing their exit.

In other cases, government officials have been accomplices to the poor safety record and reckless endangerment by workers. For example, an inquiry into a separate recent fire at the KTS Sweater factory found that the factory owners were cleared of criminal convictions despite admitting to have locked workers in the factory, after the police investigating the crime changed the details on the charge sheet.²⁷

IV. Conclusion:

ILRF submits these comments as a supplement to information submitted by the AFL-CIO. As detailed in these comments, recent actions by the GOB have undermined effective protection of labor rights in the ready-made apparel sector. The GOB has failed to enforce labor protections, including health and safety protections, and the pattern of inaction even in serious cases suggests collusion with employers. The GOB has harassed, detained and tortured credible civil society advocates, and has shut down a respected labor rights NGO, apparently in collusion with major apparel producing companies. The ‘Non-Paper’ and other written justifications for these actions by the GOB support the conclusion that the GOB is not seriously committed to due process of law, and is willing to scapegoat legitimate activists as *agents provocateurs* in order to detain them without real legal cause. Recent statements by major apparel producing companies, taken in tandem with the pattern of corruption in Bangladesh documented by Transparency International and others, suggest inappropriate and illegal collusion between the industry and the GOB. In brief, neither is there evidence of genuine commitment toward promotion of freedom of association and enforcement of labor law in Bangladesh, nor is there sufficient evidence of political will toward establishing the governance and rule of law that are necessary underpinnings of labor rights protection.

ILRF is aware that an evaluation of governance criteria is beyond the scope of the current review. Nevertheless, ILRF urges USTR’s continued attention to these matters given that Bangladesh’s predominant export sector, apparel, is not covered by the GSP, but policy makers are in active discussion regarding the possible extension of trade preferences to cover duty free textile and apparel imports from least developed countries, including Bangladesh. Any such extension of preferences must require Bangladesh to meet a threshold on governance and rule of law criteria. Given such considerations in current trade policy, ILRF urges the USTR to take all possible measures to communicate to the Government of Bangladesh the urgency of resolving labor rights violations in this sector.

²⁶ Id.

²⁷ Clean Clothes Campaign, *Compensation Bangladeshi Fire Victims Inadequate*, June 21, 2010, available at: <http://www.cleanclothes.org/urgent-actions/compensation-deceased-garib-workers-still-inadequate> (accessed July 29, 2010). and as reported by The Daily Star, *Faulty probe leads to impunity for KTS directors*, March 01, 2010, available at: <http://www.thedailystar.net/newDesign/news-details.php?nid=128183> (accessed July 29, 2010).

Finally, as USTR will no doubt be aware, the Government of Bangladesh closely observes the GSP processes. We therefore ask the committee to closely monitor the situation on the ground in Bangladesh to ensure that no retaliatory acts or illegal pressure is placed on civil society groups in response to scrutiny of the Government of Bangladesh by the Committee.

Respectfully submitted,

Bama Athreya,

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a series of loops and a final horizontal stroke.

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